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**ATTORNEYS FOR ALLEGED DEBTORS**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

| | | |
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| | § | |
| In re: | § | Involuntary Chapter 11 |
| | § | |
| **VITRO ASSET CORP., et al.,** | § | Case No. 10-47470-rfn-11 |
| | § | |
| Alleged Debtors.[1] | § | Jointly Administered |
| | § | |

# EMERGENCY MOTION OF ALLEGED DEBTORS TO AMEND SCHEDULING ORDER

[1] The Alleged Debtors are: Vitro Asset Corp. (f/k/a American Asset Holdings Corp.), Vitro Chemicals, Fibers & Mining, LLC, Vitro America, LLC, Troper Services, Inc., Super Sky Products, Inc., Super Sky International, Inc., VVP Holdings, LLC, Amsilco Holdings, Inc., B.B.O. Holdings, Inc., Binswanger Glass Company (f/k/a Troper Inc.), Crisa Corporation, VVP Finance Corporation, VVP Auto Glass, Inc., V-MX Holdings, LLC (f/k/a Crisa Holdings Corp.), and Vitro Packaging, LLC.

TO THE HONORABLE RUSSELL F. NELMS,
UNITED STATES BANKRUPTCY JUDGE:

The alleged debtors (collectively, the "Alleged Debtors") in the above-captioned involuntary chapter 11 cases (the "Involuntary Cases") hereby move the court (the "Emergency Motion") for an emergency order modifying the current Agreed Scheduling Order (the "Agreed Scheduling Order"), as reflected in the proposed amended Agreed Scheduling Order attached as Exhibit A hereto, on the grounds that it is not possible for the Alleged Debtors to comply with the Agreed Scheduling Order for the reasons set forth below. In support of the Emergency Motion, the Alleged Debtors respectfully state as follows:

## BACKGROUND

1. On November 17, 2010, Knightland Master Fund, L.P., Brookville Horizons Fund, L.P., Davidson Kempner Distressed Opportunities Fund L.P. and Lord Abbett Bond-Debenture Fund, Inc. (collectively, the "Dissident Minority Noteholders") filed the involuntary chapter 11 petitions against the Alleged Debtors, commencing these Involuntary Cases.

2. On December 23, 2010, the parties filed the Agreed Scheduling Order with the Court, which contemplated the completion of document production on January 12, 2011 and hearing dates of February 10-11, 2011. (See Docket No. 111.)

3. After the Agreed Scheduling Order was filed, the Dissident Minority Noteholders served the Alleged Debtors with 32 broad requests for production of documents (the "Document Requests"). The Document Requests cover a wide range of issues, and in some instances seek the production of documents dating as far back as January 1, 2007. The Alleged Debtors began targeted collection and review efforts upon receiving the Document Requests.

4. The parties held a preliminary meet and confer on December 29, 2010, followed by a more substantive meet and confer on January 5, 2011 during which the parties attempted to

narrow certain of their respective document requests and discussed proposed search terms for electronically stored documents.

5. During a hearing held on January 10, 2011, counsel for the parties advised the Court that the January 12, 2011 deadline for document production, and potentially the February 10, 2011 hearing date, needed to be modified because the Alleged Debtors' document collection and review was complex and, based on preliminary indications, would involve the review and production of a significant amount of Spanish language documents.

6. Following the hearing, the parties met and conferred in an attempt to estimate a reasonable timeframe within which document production conceivably could be completed. On January 11, 2011, the parties agreed to a modified schedule that preserved the current February 10, 2011 hearing date and set January 26, 2011 as the document production deadline. The new fact discovery period took the place of the original expert discovery period, as it has not been determined whether either side will designate an expert witness in these proceedings.

7. From January 5 through January 15, 2011, the parties negotiated English and Spanish language search terms for electronically stored documents. In total, those search terms returned over 56,000 documents from the files of the Alleged Debtors' document custodians. Over 60 percent of those documents are partially or entirely in Spanish. In addition, the Alleged Debtors need to review thousands of additional documents in response to several document requests for which search terms did not apply. The Alleged Debtors are in the midst of a major, ongoing effort to complete the review and production of these documents.

8. On January 21, 2011, counsel for the Alleged Debtors informed counsel for the Dissident Minority Noteholders that, notwithstanding its best efforts, it would be impossible for the Alleged Debtors to complete document production by the January 26 deadline. Counsel

proposed extending the deadline to February 4, 2011 with corresponding modifications to the remainder of the Agreed Scheduling Order, including hearing dates of February 22-23, 2011. (See Exhibit A, reflecting hearing dates of February 24-25 after an inquiry into the Court's availability.)

9. On the morning of January 24, 2011, after repeated requests from counsel for the Alleged Debtors, counsel met and conferred regarding the requested modifications to the Agreed Scheduling Order. Counsel for the Dissident Minority Noteholders indicated that the matter was being discussed with his client group, committed to provide an answer that afternoon, and requested that in the meantime counsel for the Alleged Debtors inquire whether the Court could hold the hearing on the proposed hearing dates.

10. At 5:00 p.m. Eastern time on January 24, 2011, not having received word from counsel for the Dissident Minority Noteholders, counsel for the Alleged Debtors again followed up. At 5:45 p.m. Eastern time, counsel for the Dissident Minority Noteholders stated that certain members of his client group would not agree to extend the document production deadline, necessitating the instant motion.

11. To date, the Alleged Debtors have reviewed well over 30,000 of the documents returned by electronic search terms, along with thousands of additional documents. The Alleged Debtors have produced documents on a rolling basis and to date have made three document productions totaling over 2800 pages, not including a page count for numerous documents produced as native files (*e.g.*, Excel spreadsheets). The Alleged Debtors anticipate making a fourth document production on January 26, 2011.

## ARGUMENT

12. The Alleged Debtors respectfully request that the Court enter the proposed amended Agreed Scheduling Order, with any appropriate modifications necessary to accommodate the Court's schedule. The Alleged Debtors request this relief because, despite their best efforts, it is not possible for the Alleged Debtors to comply with the current document production deadline contained in the order.

13. The Alleged Debtors' ongoing document review is a complex one. There are 15 Alleged Debtors, among which are multiple distinct operating entities. Document custodians are based in different locations and do not use a common server, and custodians' files were required to be searched with both English and Spanish search terms.

14. In addition, the fact that over 60 percent of the potentially responsive documents returned from the searches are at least partially in Spanish has only added to the complexity of the document review. The Alleged Debtors' review team includes Spanish speaking attorneys from Milbank and Fulbright, and a number of Spanish speaking temporary attorneys specifically retained to help expedite the review. The review and translation of Spanish documents necessarily proceeds at a slower pace than the review of documents entirely in English.

15. A large team of attorneys continues to spend significant time and effort reviewing potentially responsive documents, but will not be able to complete the review and production by January 26. The Alleged Debtors believe that document production can be completed by February 4, 2011, and therefore request that the Court enter the proposed amended Agreed Scheduling Order extending the document production deadline accordingly.

16. The Dissident Minority Noteholders will suffer no prejudice from the entry of the proposed amended Agreed Scheduling Order. The proposed Order allows sufficient time for

depositions, exhibit designation and pre-trial briefing, and preserves either side's option to designate an expert witness.[2] Nor will a short continuation of the hearing dates cause undue prejudice. Indeed, at the January 10, 2011 hearing, both sides indicated to the Court that a continuance might be necessary due to document production issues. The Dissident Minority Noteholders cannot now reasonably contend that they will be disadvantaged by modifications to the schedule caused by an extension of the document production deadline, which is necessary in order for the Alleged Debtors to comply with the Dissident Minority Noteholders' extensive Document Requests.

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[2] A blackline of the proposed Amended Agreed Scheduling Order against the Agreed Scheduling Order is attached hereto as Exhibit B.

## CONCLUSION

**WHEREFORE**, the Alleged Debtors respectfully request that the Court enter the proposed amended Agreed Scheduling Order attached hereto.

Dated: Dallas, Texas
January 25, 2011

**FULBRIGHT & JAWORSKI L.L.P.**

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